CIVIL CASE MANAGEMENT PLAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

IMHOTEP H'SHAKA

No. **9:17-CV-108 GTS/ATB**

VS

JOSEPH BELLNIER, et al.

IT IS HEREBY ORDERED that, Pursuant to Rule16(b), Federal Rules of Civil Procedure, a status and scheduling conference will be held in this case before the Honorable ANDREW T. BAXTER, United States Magistrate Judge on **May 4, 2017, at 10:00 AM**. All conferences will be conducted by telephone unless the parties are specifically directed to appear. Counsel for the plaintiff is directed to coordinate the initial conference call. Once all parties are on the conference line, Judge Baxter's chambers can be reached at 315-234-8600.

Counsel for all parties or individuals appearing pro se in the above-captioned action are directed to confer in accordance with Fed. R. Civ. P. 26(f) with respect to all of the agenda items listed below, no later than **twenty-one (21) days** before the scheduled Rule 16 Conference. Following that Rule 26(f) meeting, a report of the results of the conference, in the format set forth below, must be filed with the clerk no later than **seven (7) days** prior to the scheduled Rule 16 conference with the Court. Matters which the Court will discuss at the status conference will include the following: (insert a separate subparagraph as necessary if parties disagree):

1) JOINDER OF PARTIES: Any application to join any person as a party to this action shall be made on or before the 6th day of October, 2017.

2) AMENDMENT OF PLEADINGS: Any application to amend the pleadings to this action shall be made on or before the 6th day of October, 2017.

3) DISCOVERY: All discovery in this action shall be completed on or before the 28th day of February, 2018. **(Discovery time table is to be based on the complexity of the action)**

4) MOTIONS: All motions, including discovery motions, shall be made on or before the 1st day of May, 2018. **(Non-Dispositive motions including discovery motions may only be brought after the parties have complied with Section IX of General Order #25)**

5) PROPOSED DATE FOR THE COMMENCEMENT OF TRIAL: The action will be ready to proceed to trial on or before the 29th day of October, 2018. It is anticipated that the trial will take approximately ______ days to complete. The parties request that the trial be held in ______________, N.Y. **(The proposed date for the commencement of trial must be within 18 months of the filing date).**

6) HAVE THE PARTIES FILED A JURY DEMAND: X (YES) / _____ (NO).

7) DOES THE COURT HAVE SUBJECT MATTER JURISDICTION? ARE THE PARTIES SUBJECT TO THE COURT'S JURISDICTION? HAVE ALL PARTIES BEEN SERVED?

The Court has subject matter jurisdiction. All parties are subject to the Court's jurisdiction. All defendants have waived service of process.

8) WHAT ARE THE FACTUAL AND LEGAL BASES FOR PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES (INCLUDE COUNTERCLAIMS & CROSSCLAIMS, IF APPLICABLE)?

Plaintiff: As stated in the Complaint
Defendant: As set forth in the Answer

9) WHAT FACTUAL AND LEGAL ISSUES ARE GENUINELY IN DISPUTE?

Whether Plaintiff's placement in Administrative Segregation is unconstitutional and whether the placement is causing harm to Plaintiff. Issues will be further narrowed by the parties as discovery progresses.

10) CAN THE ISSUES IN LITIGATION BE NARROWED BY AGREEMENT OR BY MOTIONS? ARE THERE DISPOSITIVE OR PARTIALLY DISPOSITIVE ISSUES APPROPRIATE FOR DECISION ON MOTION?

Probably, yes.

11) WHAT SPECIFIC RELIEF DO THE PARTIES SEEK? WHAT ARE THE DAMAGES SOUGHT?

Plaintiff seeks injunctive and declaratory relief, as well as damages.

12) DISCOVERY PLAN:

A. Mandatory Disclosures

The parties will exchange the mandatory disclosures required under Rule 26(a)(1) at least **seven (7) days** prior to the date of the Rule 16 conference, unless they have obtained prior approval from the assigned Magistrate Judge to extend that deadline.

B. Subjects of Disclosure

The parties jointly agree that discovery will be needed to address the following subjects:

Plaintiff's conditions of confinement in Administrative Segregation, Defendant's process in reviewing Plaintiff's continued placement in Administrative Segregation, and Plaintiff's resulting injuries.

C. Discovery Sequence

Describe the parties' understanding regarding the timing of the discovery, and state whether it is anticipated that discovery will be phased to address different issues in stages.

Initial Disclosures will be exchanged, followed by Rule 34 discovery, depositions and inspections. Rule 33 and 36 discovery will be utilized if needed.

D. Written Discovery

Describe the written discovery demands which the parties contemplate serving under Rules 33, 34 and 36, including when they will be promulgated, the areas to be covered, and whether there is any need for any party to exceed the number of interrogatories permitted under Rule 33.

Plaintiff contemplates serving discovery for Defendant's correspondence, policies or agreements regarding the provision of mental health services in Administrative Segregation, video/photographic documentation of conditions of confinement, and documents maintained by the Office of Special Investigations regarding Plaintiff.

E. Depositions

Set forth the parties' expectations regarding depositions, including the approximate number to be taken, their location, a general description of the deponents, and an indication of whether any non-party fact depositions are anticipated.

Plaintiff anticipates deposing all eight (8) defendants and approximately two (2) non-party depositions regarding Plaintiff's medical and security status. Additional depositions may be necessary if unresolved through Rule 33, 34, or 36 discovery.

Defendants intend to take Plaintiff's deposition.

F. Experts

Set forth the parties' expectations regarding the retention of experts, and identify any particular issues to be addressed by the court concerning the retention and exchange of the information regarding experts, including whether the parties seek a variance from the expert disclosure requirements of the form uniform pretrial scheduling order typically issued by the court (i.e., initial expert disclosure at least ninety days, responsive expert disclosures at least forty-five days, and rebuttal reports due at least thirty days, before the close of discovery).

Plaintiff intends to retain an expert on the psychological consequences of prolonged isolated confinement, as well as an expert on operational and security practices in prison.

G. Electronic Discovery

Set forth the parties' understanding and expectations regarding discovery of electronically stored information. This description should include any agreements reached with respect to the retention of electronically stored information and the manner in which it will be produced, if requested. The parties should also identify any agreements regarding the manner in which electronically stored information subject to claims of privilege or work product protection will be handled, and whether a court order will be requested, either on stipulation or otherwise, to address this issue. If an agreement has been reached on the entry of such an order, provide a brief description of the provisions which will be included in a proposed order.

Plaintiff requests e-mails, policies, memos, orders, and directives kept electronically regarding his continued placement in Administrative Segregation and provision of mental health services. Plaintiff requests portions of his institutional file kept electronically.

H. Protective Orders

If the parties anticipate requesting a protective order from the court pursuant to Rule 26(c), describe the basis for the request and nature of the proposed protective order.

Defendants anticipate requesting a protective order for any photographic or video evidence collected, as well as information maintained by the Office of Special Investigations.

Plaintiff's medical and mental health records will be released pursuant to a HIPAA waiver.

I. Anticipated Issues Requiring Court Intervention

Provide a brief description of any discovery related issues which, the parties reasonably anticipate, may require court intervention.

Defendants anticipate opposing Plaintiff's request for photographic / video evidence regarding Plaintiff's conditions of confinement.

13) IS IT POSSIBLE TO REDUCE THE LENGTH OF TRIAL BY STIPULATIONS, USE OF SUMMARIES OR STATEMENTS, OR OTHER EXPEDITED MEANS OF PRESENTING EVIDENCE? IS IT FEASIBLE AND DESIRABLE TO BIFURCATE ISSUES FOR TRIAL?

Yes, although it will be more feasible to assess further after discovery.

14) ARE THERE RELATED CASES PENDING BEFORE THE JUDGES OF THIS COURT?

Similar case on some claims: Proctor v. LeClaire, 9:09-CV-01114 (GLS) (DEP) - NDNY

15) IN CLASS ACTIONS, WHEN AND HOW WILL THE CLASS BE CERTIFIED?

NA

16) WHAT ARE THE PROSPECTS FOR SETTLEMENT? Please circle below the prospect for settlement:

XX

1-----2-----3-----4-----5-----6-----7-----8-----9-----10

(VERY UNLIKELY)➜ ➜ ➜ ➜ ➜ ➜ ➜ ➜ ➜ ➜ ➜ ➜ (LIKELY)

CANNOT BE EVALUATED PRIOR TO February 28, 2018 (DATE)

HOW CAN SETTLEMENT EFFORTS BE ASSISTED?
Unable to determine how judicial intervention might assist at this time.

(Do not indicate any monetary amounts at this time, settlement will be explored by the Magistrate Judge at the time of the initial status conference)

COMPLETE QUESTION 17 ONLY IF YOUR FILING ORDER COVER SHEET WAS CHECKED AS AN ADR TRACK CASE - Subject to Mandatory Mediation under General Order #47.

17) IF YOUR CASE WAS SELECTED AS A QUALIFYING MANDATORY MEDIATION CASE, CONFIRM THAT YOU HAVE:

A. Reviewed General Order #47? YES / NO

B. Reviewed the List of Court Approved Mediators available on the NDNY website? YES / NO

C. Prepared to discuss with the Court, at the conference, whether your case should be opted out of the program? YES / NO

D. Discussed the time frame needed to complete Mandatory Mediation? YES / NO

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Pursuant to Fed. R. Civ. P. 26(f) a meeting was held on May 9, 2017 (Date) at telephonically (Place) and was attended by:

Alissa Hull for plaintiff(s)

Bruce Boivin for defendant(s) All Defendants (party name)

Matthew Reed for defendant(s) All Defendants (party name)

At the Rule 16(b) conference, the Court will issue an order directing the future proceedings in this action. The parties are advised that failure to comply with this order may result in the imposition of sanctions pursuant to Federal Rules of Civil Procedure 16(f).

Please detach this case management plan form and file electronically with the clerk no later than seven (7) days in advance of the conference date.